

EM

PRISON POLICY INITIATIVE

Peter Wagner
Executive Director
pwagner@prisonpolicy.org
(413) 961-0002

Testimony of Peter Wagner, Executive Director, Prison Policy Initiative

Before the Joint Committee on Judiciary of the Connecticut General Assembly

Public Hearing

April 1, 2013

SUPPORT HB6679

Thank you, Chairman Coleman, Chairman Fox, and members of the Committee for providing the opportunity for me to provide testimony here today. My name is Peter Wagner and I am an attorney and Executive Director of the Massachusetts-based non-profit, non-partisan Prison Policy Initiative.¹ For the last decade, I have been working to convince the Census Bureau to update their methodology and count incarcerated people as residents of their legal home addresses. Because the Census is slow to make changes, for the last decade I have also been working very closely with state and local governments to adopt interim solutions.

The bill before you today, HB6679, has its roots in the legislation passed by four states including the law of Maryland whose constitutionality was affirmed by the U.S. Supreme Court last June.² In addition, the bill has precedent in the redistricting

¹ I am also the co-author of *Importing Constituents: Prisoners and Political Clout in Connecticut* (see <http://www.prisonersofthecensus.org/ct/>) and numerous factsheets and articles about the problem in Connecticut. A sampling is at <http://www.prisonersofthecensus.org/connecticut.html>.

² Maryland's law was affirmed by the U.S. Supreme Court *Fletcher v. Lamone*, ___ U.S. ___, 2012 WL 1030482 (June 25, 2012) affirming No. RWT-11cv3220 slip op. (D. Md. Dec. 23, 2011). New York's law similar law was upheld in state court (*Little v New York State Task Force on Demographic Research and Reapportionment* No. 2310-2011 slip op. (NY Sup Ct. Dec. 1, 2011)). The

practice of the towns of both Enfield and Cheshire, because both towns refuse to use the Census Bureau's prison counts to distort their town council districts.

I'll talk briefly about the basis for passing HB6679 and would welcome questions about it, or the experiences of New York and Maryland in implementing similar legislation, but before I conclude I wanted to offer three amendments, including removing the reference to changing funding formulas.

I wanted to explain the need for legislation in Connecticut to ensure that incarcerated people are not used to distort the legislative redistricting process. If this legislation is passed now, when redistricting is still 8 years away, the state can eliminate a serious civil rights and voting rights problem in the state while creating no more than a negligible burden on the Department of Corrections.

Demographically, the problem of the Census Bureau's prison miscount and the prison gerrymandering that results is larger in Connecticut than in most states. Here, the population incarcerated in state prisons is almost large enough to be a state house district by itself. That population comes from all over the state, disproportionately the state's urban cities, but is then concentrated in the Census Bureau's data as if they were residents of just 16 Census blocks that contain prisons. As a result, almost 2/3rds of the state's prison population is credited to just 5 towns (Cheshire, East Lyme, Enfield, Somers and Suffield).

There is also a clear racial justice issue at stake: African-Americans are 9 times as likely to be incarcerated as White people in Connecticut, and Latinos 5 times as likely. But the Census Bureau counts the incarcerated population as residents of those mostly-white towns, and this creates a serious inequity at redistricting time.

decisions and documents from both cases are archived at <http://www.prisonersofthecensus.org/fletcher/> and <http://www.prisonersofthecensus.org/little/>.

Each decade, Connecticut redraws its state and local legislative districts on the basis of population to ensure that each district contains the same population as other districts. In this way, all residents are given the same access to representation and government, fulfilling the Supreme Court's "one person, one vote" rule.

However, the Census Bureau's practice of counting incarcerated people as residents of the prison location, instead of their home communities, results in significant distortions in achieving fair representation.

The Census Bureau's rule for counting prison populations is in conflict with the law of Connecticut and that of most states, which says that prison is not a residence. A legal residence is the place where a person chooses to live and does not intend to leave. The Connecticut statute is explicit:

No person shall be deemed to have lost his residence in any town by reason of his absence therefrom in any institution maintained by the state. (Sec. 9-14.)

The clearest illustration of this comes from how persons are treated for voting purposes. In Connecticut, some persons in prisons retain the right to vote – for example, if they are awaiting trial or are serving time for misdemeanors. For voting purposes, they are not permitted to claim residence in the prison, but must vote absentee in their home communities.³ Yet when the state draws legislative districts, it credits the prison population to the prison community, in clear conflict with the treatment of incarcerated persons for voting.

The basic principle of our democracy is that representation is distributed on the basis of population. Crediting incarcerated

³ See Caroline Porter, "State Prisons Create Uneven Districts," *Cheshire Record-Journal*, November 8, 2005 (noting issuance of absentee ballots to eligible incarcerated persons in Cheshire).

people to the wrong location has the unfortunate and undemocratic result of creating a system of “Representation Without Population.”

Suggested amendments:

Based on my experience on this issue over the last decade, and my experience studying the passage and implementation of similar laws in Maryland and New York, I wanted to offer three friendly amendments.

First, unlike the laws passed in Maryland, New York, Delaware and California, section 4 of this bill calls for the adjusted data to be the basis for “the distribution of state or federal funds or other benefits”. I think this is problematic for three reasons:

1. Unlike the significant impact of the prison miscount on the political process, the fiscal impact is actually quite small. Simply put, while many federal and state funding formulas use “population” as a component, the vast majority of these funding formulas are too sophisticated to be fooled by the prison miscount. For example, school aid is often tied to the number of school-age children in the Census or the number of enrolled children. And poverty aid is often tied to poverty statistics which are already calculated in such a way as to exclude the prison population.
2. There are practical concerns. Connecticut has limited ability to change how federal funds are distributed, and because federal and state funding formulas tend to be complex, the simple demographic data collected for redistricting purposes under this bill would often be incompatible with, and insufficient for use in, many federal and state funding formulas.
3. Aside from the extremely small impact and the practical issues, I’ve seen in all of the successful campaigns to end prison gerrymandering and in many of the unsuccessful

campaigns as well, that talking about funding proves to be divisive distraction when we should instead be talking about how virtually the entire state can benefit when incarcerated people are counted at the correct location for redistricting purposes. I'll note that when properly framed as a question of electoral fairness and redistricting policy, the Maryland law passed with bipartisan, urban and rural support, and that the Delaware bill passed with bipartisan support in the Senate and unanimous support in the state House.

I suggest that the Judiciary Committee remove from Section 4 the reference to "(2) the distribution of state or federal funds or other benefits". Removing this language would remove any concern that the bill would effect the funding received in communities that host prisons. For further clarity on this point, the Committee could adopt the language of Rhode Island H 5283 to prohibit the data produced under the bill from being used in funding decisions.

Second, I suggest that the Committee add to Section 4 the requirement that local government bodies use the adjusted dataset to draw town council and other population-based districts. (The statutes in Maryland and New York do this, as does the legislation currently pending in Rhode Island and Oregon.)

Third, in order to ensure maximum compatibility with Census Bureau data publication practices, replace in Section 3 the reference to "national origin" with "whether the person is of Hispanic or Latino origin".

Conclusion

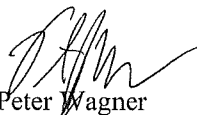
It's important to stress that prison gerrymandering reform is not at its heart an issue that pits urban districts against rural or suburban districts. The distortion in representation caused by miscounting the prison population means that every district in Connecticut that

does not contain a prison – whether urban, rural, or suburban – has its voting strength diminished compared to the handful of districts that contain significant prison populations.

The solution is simple. Connecticut should join New York, Maryland, Delaware and California in adjusting the census data for redistricting. I urge you to pass H6679.

I thank you for your time today and I would be happy to answer any questions you may have about the issue of creating greater accuracy for prison populations in redistricting, the legal and constitutional basis for doing so, and any other questions.

Thank you.



Peter Wagner
Executive Director